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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,936	12/10/2001	Gilles Bos	33900-90PUS	4569

7590 07/13/2004

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EXAMINER

BLANCO, JAVIER G

ART UNIT PAPER NUMBER

3738

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/009,936

Applicant(s)

BOS ET AL.

Examiner

Javier G. Blanco

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicants' cancellation of independent claim 1 in the reply filed on April 16, 2004 is acknowledged.
2. Applicants' addition of independent claim 9 in the reply filed on April 16, 2004 is acknowledged.
3. Applicants' addition of reference designator D0 to Figure 1A in the reply filed on April 16, 2004 is acknowledged.

### ***Claim Objections***

4. Claims 4 and 9 are objected to because of the following informality:
  - a. Regarding claim 4, please substitute "portion" (see line 2) with --element-- (as in newly added independent claim 9). This was addressed in the previous office action (112 2<sup>nd</sup> paragraph rejection as lacking antecedent basis). Appropriate correction is required.
  - b. Regarding claim 9, please add --cylindrical-- in front of "peripheral" (see line 19). Appropriate correction is required.
  - c. Regarding claim 9, please delete "and" (see line 26) and add a comma (--,--) after "element" (see line 26). Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 2-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Regarding claim 9, the language used to disclose the “cylindrical peripheral surface having a diameter D1” renders the claim vague and indefinite. The “cylindrical peripheral surface having a diameter D1” is not well characterized since, from the claim language, an arbitrary line characterizes the diameter of said surface. Claims 2-8 depend on claim 9.

b. Regarding claim 2, “the length **h** and **h'** of the sides faces” (see line 2) lacks antecedent basis. This was addressed in the previous office action. Examiner respectfully suggests adding --of the cylindrical peripheral surface-- in front of “and”, and adding --the length-- in front of “**h**”.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

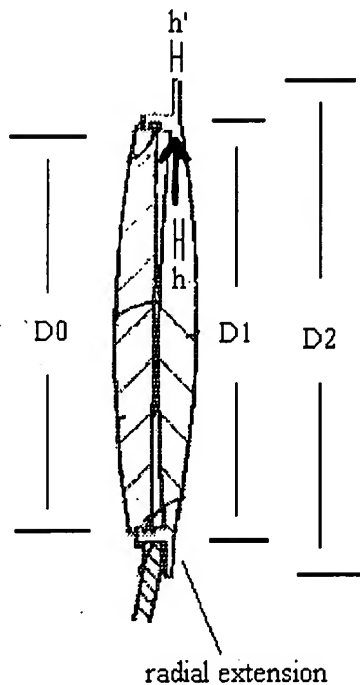
8. Claims 2-9 are rejected, as best understood, under 35 U.S.C. 102(b) as being clearly anticipated by Weiser (US 5,713,958 A; cited in previous PTO-892).

As seen in Figure 5 (see Figure 5 below), Weiser discloses an intraocular implant comprising an optical portion having an optical axis, a periphery having at least one connection zone, an anterior optical surface (lens 92), a cylindrical peripheral surface (ring 94) having a diameter D1 and a length **h** measured parallel to said optical axis, a posterior optical surface

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(lens 90) defined by a spherical cap, at least one haptic element (haptics 16, 18) having a posterior face and a connection end for connection to a respective connection zone of said periphery of said optical portion, and at least one radial extension (see L-shaped ends formed by ring 94 and lens 90) projection out of said cylindrical peripheral surface.

Each of said radial extensions having an anterior face, a side face, and a posterior face. Said side face of said radial extension disposed on a ruled surface having a diameter  $D_2$ , said diameter  $D_2$  being greater than said diameter  $D_1$ , said side face having a length  $h'$  measured parallel to said optical axis and being substantially equal to said length  $h$  of the cylindrical peripheral surface. The connection end of the haptic element is connected to the periphery of said optical portion via said anterior face of said radial extension outside said anterior optical surface of said optical portion. Each radial extension constitutes a step formed by the offset between said posterior optical surface of said optical portion and said posterior face of each said haptic element. Each said side face of each said radial extension forms a square-edged portion with said posterior face of said radial extension. The anterior optical surface is bounded by a circle having a diameter  $D_0$  that is less than the diameter  $D_1$ .



**FIG. 5**

***Response to Arguments***

9. Applicant's arguments with respect to claim 9 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

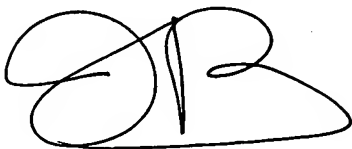
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Brady et al. (US 2003/0158599 A1) and Cumming (WO 01/89425 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 703-605-4259. The examiner can normally be reached on M-F (7:30 a.m.-4:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGB



July 9, 2004



David H. Willse  
Primary Examiner